Supreme Court of the United States

OCTOBER TERM 1948

No. 858

NATHAN D. LEIMAN and SAMUEL MARION,

Petitioners,

against

ALEXANDER GUTTMAN, GEORGE GELLER and ARTHUR BAINTON, individually and as officers and members of the Committee of Preferred Stockholders of Pittsburgh Terminal Coal Corporation, HOWARD S. GUTTMAN, MONROE GUTTMAN, RUDOLPH GUTTMAN, IRENE GUTTMAN and ELIZABETH WOLFERS,

Respondents.

PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NATHAN D. LEIMAN and SAMUEL MARION hereby respectfully apply for a writ of certiorari to the Court of Appeals of the State of New York to certify to this Court, for review and determination, its proceedings and final judgment dismissing petitioners' complaint against the above named respondents in the action which the petitioners brought in the Supreme Court of the State of New York, New York County.

The Matter Involved

The petitioners seek the review by this Court of the *4 to 3* decision and final judgment of the Court of Appeals of the State of New York in *Leiman and ano.* v. *Guttman, et al.*, 297 N. Y. 201 (R. pp. 49, *et seq.*) rendered on March 11, 1948.

By that judgment, the highest court of the state, reversing the lower courts, dismissed the petitioners' complaint on the ground, and *solely on the ground*, that under and by reason of Sections 221, 241-243 of the Bankruptcy Act (the provisions for the allowance of reorganization fees and expenses), *sole and exclusive* jurisdiction over the subject matter of the suit is vested in the federal court in which the reorganization proceedings (referred to in the complaint) had been had and that those federal statutory provisions divest the state courts of the jurisdiction which otherwise they would possess and exercise.

The bankruptcy court which the New York Court of Appeals held was endowed with exclusive jurisdiction had held otherwise, after thorough hearing and consideration. Being convinced that the dispute between the present petitioners and respondents were outside the scope of the reorganization proceedings and of the bankruptcy court's jurisdiction, that court had relegated the parties to their normal remedies and forum (*In the Matter of Pittsburgh Terminal Coal Corp.*, 69 Fed. Sup. 656; R. pp. 25-34).*

It was after and pursuant to that decision of the bankruptcy court that the presently dismissed action was brought in the New York Supreme Court.

That action was by lawyers against quondam clients to enforce a contract for their compensation for services rendered to the clients.

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* All page references to the record are to the printed record as filed in the Court of Appeals. The record is being reprinted for this court, and petitioners do not know whether the pages will remain the same.

although rendered in the course of or in connection with proceedings, in the District Court of the United States for the Western District of Pennsylvania, for the reorganization of the Pittsburgh Terminal Coal Corp. under Chapter X of the Bankruptcy Act, *the services for which recovery is sought in the action are only those which were rendered to the respondents personally and did not inure to the benefit of the estate and were not compensable out of the estate,* and for the recovery of which, as already noted, the bankruptcy court, after thorough hearing, expressly relegated the petitioners and their associate to the normal remedy of an action on their contract (*In the Matter of Pittsburgh Terminal Coal Corp., supra;* R. pp. 27-34; see also *infra,* pp. 6-9).

The Special Term of the New York Supreme Court which, in the first instance, heard respondents' motion to dismiss the complaint, held for the petitioners on the question of jurisdiction (*Leiman* v. *Guttman,* 71 N. Y. S. 2d 200; R. pp. 3-4, 37-38). So did the Appellate Division of the Supreme Court, in a 3 to 2 decision, without opinion (*Leiman* v. *Guttman,* 272 App. Div. 896, 72 N. Y. S. 2d 406; R. pp. 45-47). The Court of Appeals, however, reversed the decisions of the lower courts, by a 4 to 3 decision, and dismissed the complaint (*Leiman* v. *Guttman,* 297 N. Y. 201).

The Decisions and Opinions in This Case

As already indicated, the decisions herein are reported and also printed in the record as follows:

The decision of the bankruptcy court, Gibson, D. J., is reported in 69 Fed. Sup. 656 under the title "In re Pittsburgh Terminal Coal Corp." It is printed in the Record at pages 27-34.

The decision and opinion of the Special Term of the New York Supreme Court is reported (unofficially) in 71 N. Y. S. 2d 200. It appears at pages 37-38 of the Record.

The decision of the New York Appellate Division, without opinion, is reported in 272 App. Div. 896, 72 N. Y. S. 2d 406.

The opinion and decision of the Court of Appeals are reported in 297 N. Y. 201 and are printed in the Record at pages 49 *et seq.*

Basis of Jurisdiction

This petition is pursuant to Section 237b of the Judicial Code (Section 344b, Title 28, U. S. C.).

The determination here sought to be reviewed is a final judgment of the highest court of the State of New York that, as already noted, the petitioners are barred from resorting to the State court and that the respondents are immune from such suit and that the State court is ousted of jurisdiction which normally it would have, by reason of and under the Constitution of the United States, to wit, Article I, Section 8, and a statute of the United States, to wit, Sections 221, 241-243 of the Bankruptcy Act (U. S. Code, Title 11, sec. 621, 641-643; 11 U. S. C. A., sec. 621, 641-643).

The Question Herein

As indicated by the above statement of the matter involved and as appears more fully from the facts hereinafter set forth, the question here is:

> Do Sections 221, 241-243 or other provisions of the Bankruptcy Act bar attorneys from suing clients in State courts of general jurisdiction, or in any other court, to enforce a contract, or for *quantum meruit*, for services rendered to clients in the course of a reorganization proceeding under Chapter X of the Bankruptcy Law which are not for the benefit of the estate and are not compensable out of the estate, where (1)

the contract with and claim against the clients and all facts relating thereto have been fully and fairly disclosed to the bankruptcy court, (2) the bankruptcy court, after a thorough hearing, finds that the attorneys rendered services to the clients which are not compensable out of the estate and which should be compensated by the clients but that there are issues as to how and to what extent such compensation should be directed, (3) the bankruptcy court finds that those issues and the determination thereof are not germane to and do not concern and are foreign to the reorganization and the reorganization proceedings and (4) the bankruptcy court makes an award to the attorneys, out of the estate, for such of their services as inured to the benefit of the estate and are properly compensable out of the estate, "without prejudice" to their rights and claims against the clients in respect to the other services which the attorneys rendered to the clients?

The foregoing question divides itself into two parts:

(a) In the circumstances indicated in the question, did the bankruptcy court have jurisdiction to determine the controversy between the attorneys and their clients in respect to the services which were not compensable out of the estate and which would have to result in a personal judgment against the clients?

(b) If the court did have that jurisdiction, was it bound to exercise it? Must it determine all issues which in any way grow out of the reorganization proceedings regardless of whether or not they affect or concern those proceedings, and is the court deprived of the right to determine that (in the circumstances before it) it is more appropriate to have the issues which are personal to the attorneys and the group they represented determined in an ordinary action in a court of competent jurisdiction?

As to the first branch of the question, there are a number of cases in which bankruptcy courts, in reorganization proceedings, deliberately and expressly abstained from concerning themselves with the rights of attorneys to payment by their clients other than the debtor and other than out of property of the debtor (see *infra*, pp. 16-19). Such questions were deemed by the courts foreign to the matters before them. Although there is absent from all but one of them an express statement that the court is without jurisdiction in the premises, that holding is implicit in them. Among such decisions is *Greensfelder v. St. Louis Public Service Company*, 114 F. 2d 53; in which this court, in 1940, *denied a writ of certiorari* (311 U. S. 714).

The only exception to this line of cases is *In Re McCrory Stores Corp.*; 19 Fed. Sup. 917, affirmed 91 F. 2d 947, c. d. 302 U. S. 725, where, in 1937, the court held that a fee contract with an attorney by a committee of creditors in behalf of the creditors whom they represented, as distinguished from a fee agreement between an attorney and a principal, was subject to the court's revisionary jurisdiction (see *infra*, p. 19).

However, whatever may be the correct answer, on the basis of authority, to the first branch of the question, there certainly is no precedent for the holding that the bankruptcy court is bound to finally adjudicate all fee questions between attorneys and the clients for whom they appear in reorganization proceedings, regardless of the facts and circumstances. That is the decisive question here. On that question, *all of the federal decisions are contrary to the decision rendered herein by the New York Court of Appeals.*

The Additional Relevant Facts

Petitioners' complaint was dismissed on motion before answer, in accordance with Rule 107, subdivision 2, of the New York Rules of Civil Practice (R. pp. 4-5).

That rule, in so far as material, provides:

"After the service of the complaint, the defendant may serve notice of motion for judgment dismissing the complaint * * * on the complaint and an affidavit stating facts tending to show:

"* * *

"2. That the court has no jurisdiction of the subject of the action."

By affidavits pro and con, there were presented to the court the applicable rulings and decisions of the United States District Court for the Western District of Pennsylvania. The facts therein set forth were not contested. Those rulings and decisions are part of the record on which the State courts acted (R. pp. 25-34).

The controlling facts, therefore, are those which appear in the undenied complaint as amplified by the referred to decisions.

It appears therefrom that during the pendency of Chapter X proceedings for the reorganization of the Pittsburgh Terminal Coal Corporation, the petitioners were retained by a committee of its preferred stockholders to represent and serve the interests of the preferred stockholders (R. pp. 12-13).

Some of the preferred stockholders (including respondents) asserted claims "for certain moneys alleged to be due on preferred stock certificates under the sinking fund provisions relating thereto". For the assertion and prosecution of their claims "and for other services in connection with the said reorganization proceedings", the respondents agreed to pay to the attorneys "in addition to any sum allowed by the court" 20% of their preferred stock (R. p. 13). In pursuance of that agreement 584 shares of the preferred stock were escrowed with the chairman of the committee for delivery to the attorneys at the conclusion of the reorganization proceedings (R. pp. 13, 15-16).

In the course of the reorganization proceedings, the petitioners and an associate attorney rendered services which were for the benefit of the estate as well as services which were in controversies with the estate and its trustee or were otherwise exclusively beneficial to the stockholder clients without benefit to the estate (R. pp. 29-30).

When a plan of reorganization came up for consideration and confirmation, the petitioners and their associate applied to the bankruptcy court for the fixation and allowance of their fees and expenses. In that application, they made a full and fair disclosure of their contract and called attention to the fact that the respondents had repudiated it on various grounds. Thus the court was presented with a controversy between the attorneys and their clients. The court held hearings thereon. It finally decided that it had no jurisdiction to determine the controversy in so far as it pertained to services which were not compensable out of the estate, and, finding that the fair and reasonable value of the services which these attorneys had rendered for the benefit of the estate, and were compensable out of the estate, amounted to $37,500, the court awarded that out of the estate "without prejudice to such rights" as the attorneys may have under the above referred to agreement in respect to their other services (R. pp. 27-34).

In the course of its decision, the court found that the petitioners'

> "earliest efforts * * * were hostile to and not for the benefit of the trustee's action"

and in other respects the petitioners

> "had rendered services to the preferred stockholders * * * which were not compensable from the fund distributed by order of the court * * *. That such services to the Preferred Stockholders Committee, at the request of its members, are entitled to a reasonable recompense seems unquestionable if the escrow agreement is to be reasonably interpreted" (R. pp. 29-30).

After referring to the various conflicting contentions as to the value of the services and the method of payment therefor, and as to the extent of the court's jurisdiction, the court held that those disputes were not a controversy which it should adjudicate. The court adjudicated all that it thought germane to the reorganization proceedings, and as to all else relegated the parties to their normal remedies (R. pp. 31-34).

Implicit, if not expressed, in the decision of the bankruptcy court is the determination that, in the circumstances of this case, the contract between the parties and the claims thereunder and in respect thereto, in so far as they pertain to services rendered to the individuals and not to (or to the benefit of) the estate, did not affect and did not concern the reorganization and the reorganization proceedings.

Reasons for Granting the Writ

This application comes squarely within subdivision 5a of Rule XXXVIII of the Rules of this Court, as a case where a state court has decided a federal question of substance not heretofore determined by this Court.

That the case presents a federal question is not open to dispute.

That the question has not heretofore been determined by this Court is plain.

Moreover, the decision sought to be reviewed is directly contrary to all of a substantial number of decisions by various of the United States District and Circuit courts (see *infra*, pp. 16-20).

That the question is of substance, it is respectfully submitted, is self-evident. Bankruptcies and reorganizations in bankruptcy courts are a vital function of the federal judicial system. They affect the business world and the community at large. The proper conduct of those proceedings has been and is the concern of the courts, of Congress and administrative agencies. Successive revisions by Con-

gress of the applicable provisions as well as a number of decisions of this Court recognize the importance to those proceedings and to the general welfare of the problem of fees and expenses in or in connection with such proceedings.

The substantial importance of the precise question here presented is indicated by the fact that the Securities Exchange Commission appeared in the New York Court of Appeals as *amicus curiae*. In the brief presented in behalf of the Commission, it was stated:

> "The Commission's interest in submitting a brief in this proceeding as *amicus curiae*, arises from the fact that the issue raised * * * involves a matter of substantial importance in the administration of Chapter X."

The Applicable Statutes and Decisions Thereon

(1) The provisions of the Bankruptcy Act which have a bearing on the questions here presented are Sections 111-116, 209-212, 221, 241-250.

The provisions directly in point will be quoted below.

The significance of the other provisions in the referred to sections is that the "exclusive jurisdiction" with which the court is vested in proceedings under Chapter X is "of the debtor and its property" and nobody else (Section 111), and generally the court's powers are made the same as in bankruptcy proceedings with the addition of the powers which formerly were exercised in equity receiverships (Sections 112-116).

Creditors and stockholders are specifically authorized to "act in person, by an attorney at law, or by a duly authorized agent or committee" (Section 209) and representatives are required to file specified statements (Sections 210-211).

Section 212 reads as follows:

"Sec. 212. The judge may examine and disregard any provision of a deposit agreement, proxy, power or warrant of attorney, trust mortgage, trust indenture, or deed of trust, or committee, or other authorization, by the terms of which an agent, attorney, indenture trustee, or committee purports to represent any creditor or stockholder, may enforce an accounting thereunder, may restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claim or stock acquired by such person or committee in contemplation or in the course of the proceeding under this chapter to the actual consideration paid therefor."

It will be noted that the above language does not include fee agreements with attorneys-at-law for legal services.

Section 221, as far as material, reads as follows:

"Sec. 221. The judge shall confirm a plan if satisfied that—

* * * *

"(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this Act;

"(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable, or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge."

Sections 241-250 deal with allowances. In respect to allowances to creditors and stockholders and their attorneys, Section 243 provides as follows:

"Sec. 243. The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, *the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate,* and to the proper costs and expenses incidental thereto." (Emphasis supplied.)

(2) Even if the above quoted Section 212 were applicable —as plainly it is not—to fee agreements with attorneys-at-law for compensation by their clients (as distinguished from the business arrangements with representatives to serve in lay capacities), the section would go no farther than to give the court power to disregard that which, under established legal or equitable principles, is unenforcible. Where the section applies, it applies only to cases of such over-reaching or of oppression or of violation of law or public policy that there should not be an unrevised enforcement of the arrangement.

That section has no application to this cause for the dual reason that (a) it has no application to fee arrangements directly between parties in interest and attorneys-at-law for legal services and (b) the bankruptcy court, in this case, after a thorough hearing, found nothing unfair or criticizable in the agreement between petitioners and respondents and held that the parties should be left to their ordinary remedies. The opinions of New York Court of Appeals make no mention of Section 212.

(3) As to above-quoted Section 243, the bankruptcy court, in this case, complied with it and exhausted it by awarding to the petitioners an amount the court deemed fair for such of their services as were compensable out of the estate. It was only as to the residue of the services that the court relegated the petitioners to their ordinary remedies.

(4) That leaves for consideration only Section 221, and that is the only section of the Bankruptcy Law which the New York Court of Appeals found was violated by the bankruptcy court in abstaining from adjudicating petitioners' claim for the services not compensable out of the estate.

The New York Court of Appeals construed subdivision 4 of that section as mandatorily requiring the bankruptcy court, as a condition precedent to confirming a plan of reorganization, to pass on all payments or promises of payment for all services in any way connected with the reorganization proceeding, irrespective of whether or not such payments or promises in any way affect the reorganization plan or the proceedings.

That, petitioners respectfully submit, is a misconstruction, for the following reasons:

(a) The payments or promises referred to in subdivision 4 of Section 221 are "by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person". "Any other person", thus associated with the words "the debtor * * * or by a corporation * * * under the plan", means, it is submitted, only such persons as are associated with the debtor in the plan. The principle of *ejusdem generis* seems peculiarly applicable.

(b) That is corroborated by the limitation of the section to payments and promises "for services * * * in, or in

connection with the proceeding or in connection with the plan and incident to the reorganization." That language encompasses only payments or promises which in some way affect the reorganization, such as (a) payments or promises for services to the estate, (b) payments or promises which condition or affect the plan of reorganization, (c) payments made or to be made out of the estate or by the reorganized corporation or out of assets destined to or which otherwise would reach the debtor or its creditors.

Therefore, the description of the payments or promises as well as the enumeration of the payers or promisors exclude from the scope of the section payments or promises which have no bearing on the reorganization and have not affected it and will not in any way affect it.

(c) That conclusion, petitioners believe, is further supported by the requirement that if any payment or promise is not reasonable, the plan shall not be confirmed. That is the prescribed consequence; no alternative or other corrective course is provided in that section. It does not authorize the court to direct the elimination or reduction of the objectionable payments or promises. It directs the court to reject the plan. Certainly, it could not be the intention of Congress to defeat a desirable and beneficent plan because of a payment or promise which does not enter into it and is wholly extraneous to it.

Moreover, the refusal to approve a plan because of the unreasonableness of payments or promises which are not dependent upon allowance by the court can serve as a corrective pressure, and be operative as such, only on those whose interests require the approval of a proposed plan. The choice of that method of control also indicates the limitation of the intended scope of the supervision and control to the payments and promises which enter into, condition or affect the reorganization.

(d) That there is such a limitation appears from still another consideration: What of fees to attorneys who de-

fend litigation brought by the trustee or who constitute and conduct proceedings against the trustee or who advise persons with whom the trustee contracts while carrying on the business of the debtor? We assume it readily will be granted that although all of those services arise out of and are connected with the reorganization proceedings, the bankruptcy court is not concerned and cannot concern itself with them because such payments do not impair the *res* which the court is administering. Why does not the same hold true in respect to other services which the court finds were rendered not for the benefit of the estate and the compensation for which is of no interest to the reorganization or of no concern to the court? Apposite here is the holding in *In re P-R Holding Corp.*, 147 F. 2d 895 (C. C. A., 2nd C., 1945), that Section 221 (4) "obviously was not intended to require (the disclosure to) and the approval by the court of matters like the commissions paid a broker for the purchase of creditors' certificates" by the proponents of a plan in order to eliminate opposition thereto.

(5) This argument does not necessarily equally limit the scope of the required disclosure, for it is for the court (and not the interested persons) to decide what does and what does not affect the reorganization. The contention here is only that where the court, after full disclosure and consideration, decides that certain payments or promises or claims do not affect or concern the reorganization or the court, Section 221(4) of the Bankruptcy Act does not empower, much less compel, the bankruptcy court to render final judgment between the interested parties.

(6) Petitioners submit that Gibson, D. J., in refusing to adjudicate the controversy between them and the respondents, correctly construed the statute when he held that "undoubtedly" the court is required to scrutinize all payments and promises to determine "whether they tend to vitiate the plan", and where it finds otherwise and the

payment is not to be made out of the estate its authority ends. "Nowhere" in the statute, said the court, is it provided that an order shall be made requiring payment of amounts which "cannot be charged to the fund for distribution" (R. p. 31).

> "If one had promised compensation to his counsel for his services in a reorganization, but his counsel has not aided in the proceeding, Section 221-(4), in the opinion of the court, furnishes no authority for an order, upon the promisor to pay the counsel the amount promised or what, in the opinion of the court, is the reasonable value of his services. The existence and scope of the promise creates an issue not before the court" (R. pp. 31-32; *Matter of Pittsburgh Terminal Coal Corp., supra*, 69 Fed. Sup. 656, 659-660).

That conclusion is supported by

> *Greensfelder* v. *St. Louis Public Service Company*, 114 F. 2d 53, 59-60, 62 (claim of Carter), 63-64 (claims of Greensfelder and Stein); C. C. A. 8th C. 1940, c. d. 311 U. S. 714;
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> *In re Mt. Forest Fur Farms of America, Inc.*, 157 F. 2d 640 (C. C. A., 6th C., 1946);
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> *In re Standard Gas & Electric Co.*, 106 F. 2d 215, 216 (C. C. A., 3rd C., 1939);
>
> *Zweifel* v. *Trans-State Oil Co.*, 99 F. 2d 650 (C. C. A., 5th C., 1938);
>
> *Re Watco Corporation*, 95 F. 2d 249, 251-2 (C. C. A., 7th C., 1938);
>
> *In re Middlewest Utilities Co.*, 17 F. Sup. 359, 377 (N. D. Ill., 1936).

See also *In re Paramount-Publix Corporation*, 12 F. Sup. 823 (S. D. N. Y., 1935); *London* v. *Snyder*, 163 F. 2d 621 (C. C. A., 8th C., 1947); and *Cooke* v. *Bowersock*, 122 F. 2d 977 (C. C. A., 8th C., 1941) and particularly the next to the last paragraph (at p. 985).

In the *Greenfelder* case (*supra*), the Circuit Court of Appeals for the Eighth Circuit held expressly (at p. 64):

> "In the proceedings for the allowance of the fees, the court was not concerned with the question of the amount of fees which Mr. Greenfelder's client or the noteholders' committee might be obligated to pay him."

And this court denied a petition for a writ of certiorari (311 U. S. 714).

In the *Mt. Forest Fur Farms* case (*supra*), the Circuit Court of Appeals for the Sixth Circuit said:

> "The District Court found that the services of these attorneys did not aid in the general administration of the estate of the debtor corporation; that their services in connection with the formulation of the plan were primarily for the benefit of their special clients; *that they have a lien for their fees on the stock to be distributed to their clients, to which they should resort for their fees* for services rendered. No abuse of discretion on the part of the District Court appears * * *" (at p. 649, emphasis supplied).

The same decision approved a holding of the District Court in respect to the application of another attorney:

> "The District Court found, moreover, that the attorney has a fee arrangement with various parties whom he represents and should look to them * * * for his compensation" (at p. 650).

Similarly, *In re Paramount-Publix Corporation* (*supra*), the court said (at p. 836) of an attorney whose services resulted in no contribution to the estate "he should look to his own clients for his compensation for his services in connection with the various court proceedings".

(7) We can find nothing on this point, much less anything contra, in either *Wood* v. *City National Bank and Trust Company*, 312 U. S. 262, or *Brown* v. *Gerdes*, 321 U. S. 178, the two and only two cases cited by the New York Court of Appeals.

The first of these cases was concerned with the problem of whether compensation out of the estate should be denied for services admittedly compensable out of the estate because the persons who rendered them were guilty of dual conflicting representation. In passing on that point, this Court referred to and quoted Section 221(4) of the Bankruptcy Act and remarked:

> "Under Chapter X of the Chandler Act, the bankruptcy court has plenary power to review all fees and expenses in connection with the reorganization from whatever source they may be payable. Reasonable compensation for services rendered may be allowed."

That case presented only a question of payment out of the estate. The problem here involved was not considered; that is, the problem of under what circumstances the bankruptcy court may or must pass on fees payable from sources other than the estate, whether such power exists in respect to payments which have no effect on the reorganization, and whether such power is not only "to review" them but also to interdict them or enter judgment for their payment personally against such persons as may be liable therefor. The remark above quoted throws no light on those questions.

In *Brown* v. *Gerdes*, *supra*, the issue also was limited to a fee payable out of the estate. Moreover, in that case, the parties seeking compensation applied therefor to the state court not after being relegated thereto by the bankruptcy court but in antagonism to that court and in an effort to avoid it.

(8) With the single exception of *In Re McCrory Stores Corp.*, 19 Fed. Sup. 247 (S. D. N. Y. 1936), aff'd 91 F. 2d 947 (C. C. A., 2nd C., 1937), c. d. 302 U. S. 725, there appears to be no case in which the bankruptcy court undertook to adjudicate the fee rights of attorneys against the persons they served under contracts providing for compensation for services not compensable out of the estate. In the *McCrory* case, the court drew a distinction between a fee arrangement between principals and their attorneys and a fee agreement between a committee in behalf of the principals they represented and an attorney, and held that the latter type of agreement, dependent upon a power conferred on the committee by the persons it represented, and as an act of a committee, was subject to scrutiny and revision under the predecessor of present Section 212. The court, apparently, was satisfied that a fee arrangement for legal services directly between a party in interest and his attorney is of no concern to the bankruptcy court.

That decision is no precedent here because: (1) The agreement in this case is directly with the stockholders who escrowed their stock for delivery to the petitioners (and their associate) in payment of their fee (R. pp. 13, 15-16). (2) In the *McCrory* case, the attorneys' fee was a lien on money payable by the estate to the creditors who were represented by the employing committee; thus there was a lien on a *res* in the custody of the court, and the court held that the duty to distribute that *res* properly made it appropriate that it adjudicate the claimed lien, whereas here the escrowed stock is not part of the *res* administered by the court and the court was convinced that the disposition of the stock was not a reorganization issue. (3) While the court held that it was empowered to adjudicate the amount to be paid to the attorney, it did not hold that it was mandatorily required to do so and had no discretion to do otherwise, no matter what were the facts and circumstances.

The foregoing analysis of the decisions shows that this Court has not held, and no other federal court has held, that the bankruptcy court was under a statutory compulsion to finally adjudicate the disputes and issues between the petitioners and the respondents and that no other court is competent to do so despite the holding by the bankruptcy court that the issue was of no concern to the reorganization proceedings. On the contrary, the disposition which the bankruptcy court made was in accordance with the practice that has been consistently followed (with but a single exception) in the substantial number of cases in which the problem arose.

Prayer

Wherefore, petitioners respectfully pray that this petition for a writ of certiorari to review the complained of judgment be granted.

Dated, New York, June 9, 1948.

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